

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JERRYL WARE,

Plaintiff

**VS.**

LEGAL MEDIATION PRACTICE, INC.,

Defendant

CIVIL ACTION NO. \_\_\_\_\_

**H-05-1491**

United States Courts  
Southern District of Texas  
FILED

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APR 27 2005

**Michael N. Milby, Clerk of Court**

## PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Jerryl Ware, Plaintiff in the above-numbered and styled case, complaining of and against Legal Mediation Practice, Inc., and for cause of action would respectfully state the following:

## I. INTRODUCTION

1. This is an action for damages brought by an individual consumer alleging that Defendant has violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), and the Texas Debt Collection Act, Tex. Fin. Code § 392.301 et seq. (hereinafter "TDCA"), which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

## II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business here and/or the conduct complained of occurred here. Specifically, the Defendant telephoned the Plaintiff in Houston, Texas, in violation of the Federal Fair Debt Collection Practices Act. This action constitutes a tortious act in Texas and subjects the Defendant to suit in Texas.

### III. PARTIES

3. Plaintiff, Jerryl Ware, is an individual residing at 1300 Redford Street, Apartment 702A, Houston, Texas 77034.

4. Defendant, Legal Mediation Practice, Inc. (hereinafter LMP), is a Florida corporation engaged in the business of collecting debts in this state with its principal place of business located at 1919 Blanding Boulevard, Suite 19, Jacksonville, Florida 32210. The principal purpose of Defendant LMP is the collection of debts using the mails, and Defendant LMP regularly attempts to collect debts alleged to be due another. LMP may be served through the Texas Secretary of State's office, since it has no registered agent in Texas.

5. Defendant LMP is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

### IV. FACTUAL ALLEGATIONS

6. On or about November 3, 2004, Plaintiff entered into a payday loan transaction with Republic Bank and Trust Company in the amount of \$425.00. The annual percentage rate on the loan document is listed as 459.90%. Following default on the loan, collection of the outstanding debt was turned over to Defendant LMP. Plaintiff had been contacted by Defendant LMP numerous times in regards to the collection of the debt. In particular, Jerryl Ware had been contacted by Mr. Ray Pierson at Legal Mediation Practice on several occasions.

7. On March 24, 2005, Plaintiff sent a letter by facsimile and by certified mail, return-receipt requested, to Mr. Ray Pierson at Legal Mediation Practice requesting that they cease communication with Plaintiff regarding the collection of the debt.

8. On March 26, 2005 at 10:49 a.m., Plaintiff received a telephone call from Mr. Ray Pierson of Legal Mediation Practice. Mr. Pierson left a message for Plaintiff saying that he had called previously on March 21, 2005 and because he had not gotten a

response from Plaintiff that Legal Mediation Practice "will have to go forward" regarding the collection of the debt. He left a telephone number to be reached at, 1-800-201-0565 and ended the message saying, "I wish you the best of luck."

**V. CLAIM FOR RELIEF UNDER FAIR DEBT COLLECTION PRACTICES ACT**

9. Plaintiff incorporates paragraphs 1-8 above.

10. Defendant LMP violated the FDCPA by communicating with the Plaintiff by telephone regarding the debt in violation of 15 U.S.C. § 1692c(c).

10. As a result of these violations of the FDCPA, Defendant is liable to the Plaintiff for a declaratory judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney's fees.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA,
- B. Actual damages;
- C. Statutory damages pursuant to 15 U.S.C. § 1692(k)(a).
- D. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692(k)(a)(3), including fees in the event of appeal; and
- F. Such other and further relief as may be just and proper.

Respectfully submitted,



RICHARD TOMLINSON  
State Bar No. 20123500  
S.D. Texas Bar No. 111  
1 Greenway Plaza, Suite 325  
Houston, Texas 77046  
Telephone: (713) 627-2100  
Facsimile: (713) 627-2101

ATTORNEY FOR PLAINTIFF

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

<b>I. (a) PLAINTIFFS</b> JERRYL WARE  <b>(b) County of Residence of First Listed Plaintiff</b> <u>HARRIS COUNTY</u> (EXCEPT IN U S PLAINTIFF CASES)  <b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> RICHARD TOMLINSON ONE GREENWAY PLAZA, STE 325, HOUSTON, TEXAS 77046 713-627-2100 EXT 219	<b>DEFENDANTS</b> LEGAL MEDIATION PRACTICE, INC <div style="text-align: right; font-size: 2em; font-weight: bold;">H-05-149</div> County of Residence of First Listed Defendant _____ (IN U S PLAINTIFF CASES ONLY)  NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED  Attorneys (If Known) _____  <div style="text-align: right;"> <b>United States Courts</b>  <b>Southern District of Texas</b>  <b>FILED</b>  <b>APR 27 2005</b> </div>
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<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  1 <input checked="" type="checkbox"/> U.S. Government Plaintiff <input checked="" type="checkbox"/> Federal Question (U S Government Not a Party)  2 <input type="checkbox"/> U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)  <table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State <input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3 Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input type="checkbox"/> 1	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State <input type="checkbox"/> 2	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

V. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U S Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

<b>V. ORIGIN</b> (Place an "X" in One Box Only)						
1 <input type="checkbox"/> Original Proceeding	2 <input type="checkbox"/> Removed from State Court	3 <input type="checkbox"/> Remanded from Appellate Court	4 <input type="checkbox"/> Reinstated or Reopened	5 <input type="checkbox"/> Transferred from another district (specify)	6 <input type="checkbox"/> Multidistrict Litigation	7 <input type="checkbox"/> Appeal to District Judge from Magistrate Judgment

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>Fair Debt Collection Practices Act, 15 U.S.C. § 1692K(D), 28 U.S.C. § 1337</u> Brief description of cause: <u>Violation of Fair Debt Collection Practices Act by communicating with Plaintiff following "cease communication" letter</u>
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> _____	CHECK YES only if demanded in complaint <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions) JUDGE _____ DOCKET NUMBER _____
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DATE <u>4/27/05</u>	SIGNATURE OF ATTORNEY OF RECORD <u>Richard Tomlinson</u>
FOR OFFICE USE ONLY	

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG JUDGE _____
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**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this sector for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.